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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1929

No. 468

EMMETT COCHRAN ET AL.,
**Appellants,**

*versus*

LOUISIANA STATE BOARD OF EDUCATION ET AL.,
**Appellees.**

## *BRIEF ON BEHALF OF APPELLEES.*

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## *BRIEF ON BEHALF OF APPELLEES.*

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### STATEMENT OF THE CASE.

The statement of appellants is substantially correct except that we believe the language used on page 2 of appellants' brief, is misleading, wherein it is asserted "The State of Louisiana by Acts 100 and 143 of the Legislature of 1928 (hereinafter quoted), authorized and appropriated the sum of $750,000.00, or so much thereof as might be necessary, to be paid from "the public tax fund" of the State to the State Board of Education for the purchase of school books to be supplied free to all

the school children of the State, (excepting those attending colleges and universities) including children attending private schools, where tuition is charged, and to sectarian schools. * * *"

Under paragraph 3 of Rule 25 of this Court, the appellees are not required to set forth a statement of facts, but are reserved the privilege of correcting any inaccuracy or omission in the statement of the other side.

We respectfully direct the attention of this Court to the fact that the fund out of which the textbooks are purchased for the school children of the State is not the General Fund of the State, but is a special fund created by the imposition of severance taxes upon certain natural resources, such as oil wells, timber lands, salt, sulphur, etc. We desire to call the attention of the Court to the fact that these plaintiffs neither in their original petition (R., 1), nor in their petition for appeal (R., 49) assert or allege that they are engaged in any of the businesses upon which a severance tax has been imposed under the laws of Louisiana.

We further point out, as possibly an inadvertent omission from the statement of the case set forth by appellants in their brief, that the Severance Tax Fund of the State of Louisiana has been dedicated to various purposes, one of which is supplying funds with which to obtain school books to be supplied free to all the school children of the State, and after the severance tax funds already appropriated and especially allocated to the purchase of textbooks for all the school children of the State, then, and only then, under the statutes of Louisiana, does the

surplus of such Severance Tax Fund go into the general school fund of the State. Of course, the general school fund of the State is separate and apart from the General Fund of the State, the latter taking care of all the expenses of administering the government of the commonwealth. (The Severance Tax Act, No. 5 of 1928, is quoted in full in the Appendix.)

## SPECIFICATIONS OF ERRORS.

While appellees are not required, by the rules of this Court, as is clearly set forth in paragraph 3 of Rule 25 of this Honorable Court, to set forth a specification of errors, we, nevertheless, wish to direct the attention of this Honorable Court to the contentions which appellants now confine themselves to and which they complain of as errors in the judgment of the lower Court.

They contend, first "that the purchasing and supplying of free school books by the State out of public tax funds, for the use of all the school children of the State, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State is not 'an ordinary obligation and expense of the government'."

Second, that the Court below erred in holding that the purchasing and subsequent granting or lending, of free school books by the State out of "public tax moneys," for the use of all the school children of the State, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State, is permissible as an exercise of the police power of the State; that it is for a public purpose so as to authorize the expenditure thereof of State funds; that

it does not constitute a taking of the property of plaintiffs, as taxpayers and as patrons of the public schools of the State, without due process of law, in violation of the 14th Amendment to the Constitution of the United States; that it is not in violation of Section 4 of Article IV of the Constitution of the United States which guarantees to every State a Republican Form of Government.

Hence, the appellants confine themselves to the two separate and distinct contentions: (a) That the furnishing of school books to the children of the State is not an ordinary obligation and expense of the Government; and (b) that the furnishing of such books by the commonwealth to its children attending schools, whether public or private, tends to deprive the appellants as taxpayers and patrons of the public schools, of their property without due process of law, and further, that it constitutes a violation of Section 4 of Article IV of the Constitution of the United States which guarantees to every State a Republican Form of Government.

The appellants insist that the question presented here is whether, "under the Federal Constitution, the State, under the guise of taxation, has the right, as interpreted by the highest court of the State, to take private property to aid private, religious, sectarian, and other schools not embraced in the public educational system of the State of Louisiana, by furnishing textbooks free to the children attending such private schools."

We respectfully direct the attention of this Honorable Court to the fact that the State is not levying a tax upon its people for the purpose of purchasing free textbooks for the school children of the State, but is merely using a por-

tion of a special fund created by legislative authority of the State, and known as the "Severance Tax Fund," for the purposes of promoting the education of its children, regardless of whether they attend private or public schools, but directing that this money so expended for the purchase of textbooks shall be done under the supervision of the State Board of Education, and that such books so furnished should constitute only such books as are em-
Legislature or by the Constitution of the State.
braced in the curriculum of the State Board of Education.

## ARGUMENT.

Petitioners, EMMETT COCHRAN, WILLIAM M. GUICE, JR., HENRY G. STEINAU, and ALLIE H. TARVER, all residents of the Parish of Caddo, attack the constitutionality of the statutes which are intended to provide free textbooks for the school children of Louisiana.

There were four suits filed by certain residents of practically the same territory, all four of which have been decided adversely to their contentions, and out of these four suits, representing the contentious litigants of that particular section of Louisiana, the above named four plaintiffs remain single and alone in their plea that they are being deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and that the purchase of textbooks, the very purpose of which is to bring enlightenment to the benighted citizens of the State of Louisiana, not only deprives them of their property without due process of law, but tends to destroy the Republican Form of Government guaranteed to each State by the Federal Constitution. The other litigants were content to accept

the judgment of the Supreme Court of Louisiana, to the effect that no Article of the Constitution of Louisiana had been violated, and further, that a Federal question worthy of consideration by this high tribunal did not present itself. But these four plaintiffs, representing an infinitesimal percentage of the now more than two million population of the State of Louisiana, insist that an appropriation made by the Legislature to which they contribute not one cent for the benefit of bringing the youth of the State to a degree of enlightenment, is a sacrilege against the Constitution of the United States, in that it tends to destroy the Republican Form of Government guaranteed by that Constitution to each State and to deprive them of their property without due process of law. Note, then, the allegations of their petition. (R., 1 to 9.)

In paragraph 1 they state that they are citizens and taxpayers, being the owners of both real and personal property, located within the State.

In paragraph 2 it is alleged that the Louisiana State Board of Education is a body politic, organized and existing under the laws of Louisiana, domiciled in the City of Baton Rouge, Parish of East Baton Rouge, Louisiana, with H. H. White as its President.

In paragraph 3 they allege that your petitioners are patrons of the public school system of the State of Louisiana, each having one or more children who have been, are now and will continue for several years hereafter to be enrolled in attendance in the public schools of the Parish and community in which your petitioners live and reside, an allegation, if it pleases the Court, which applies practically to every citizen of the State from the Arkansas line

to the Gulf, and from Mississippi on the East, to Texas on the West.

In paragraph 4 they allege that the State has levied and collected under the provisions of Act 140 of 1922 of the Legislature of Louisiana, and laws amendatory thereof, what is commonly known as a severance tax on the natural resources of the State. But this Honorable Court will observe from that statute that this severance tax is levied upon "all natural resources severed from the soil or water, including all forms of timber, turpentine, and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; * * *."

This Honorable Court will also observe that these four plaintiffs do not aver or allege that they are engaged in any business upon which the Severance Tax is levied.

In the fifth paragraph of their petition, plaintiffs aver that unless the State Board of Education is restrained it will illegally expend and distribute, and will continue to illegally expend and distribute, the Severance Tax Fund as aforesaid, as it accrues in order to supply school books, free of cost, to all the school children of the State of Louisiana, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State of Louisiana. And even now, is preparing to purchase, and will purchase with the public funds aforesaid, the said school books to be supplied and donated (a gratuitous statement) to the persons aforesaid, the said defendant giving as its authority for said acts, Act No. 100 of the Legislature of Louisiana of 1928,

p. 114, and Act No. 143 of the Legislature of Louisiana of 1928, p. 169.

We believe we have pointed out, and will further accentuate in this brief, the fact that the State, as a commonwealth, owes to its children the duty of bringing them up as good citizens. That the duty of the parent is to send his child to school, and the State may even coerce him by laws to compel the child's attendance in school. There is no question but what the jurisprudence of the entire Nation is that the parent cannot be compelled to send his child to any particular school but rather to the school of his choice, whether it be private, public or sectarian. But the error, which we believe plaintiffs have fallen into, is that the State appears to owe no obligation to its children in the matter of education, except those who elect to attend its public schools.

The members of this Honorable Court may well take judicial cognizance of the fact that from Central Louisiana on down to the Gulf at least, which embraces by far the great bulk of the population of the State, the national census shows that the Catholics and Jews are overwhelmingly in the majority; that if the Catholics and Jews had refrained and refused to vote special taxes for the maintenance of the public schools, there would scarcely be a public schoolhouse located within the limits of that territory. They not only willingly and freely voted these special taxes for the public schools, but out of their own funds maintain private schools for their own denominations, thus more than doubly taxing themselves and evidencing a spirit of liberality in the matter of education

which, in our humble estimation, is most laudable and commendable.

The other sections of the petition of plaintiffs are merely an attack upon the Acts of the Louisiana Legislature referred to, until that part of it is reached and embraced in paragraph 15 of the petition, in which they allege that the expenditure of the public monies of the State, complained of in their petition, is the taking of petitioners' property for private purposes without due process of law, and contrary to the guaranteed Republican Form of Government, in violation of Section 4 of Article IV, and of the Fourteenth Amendment to, the Constitution of the United States.

Insofar as the petition levies an attack against the Acts in question as being in violation of the Constitution of the State of Louisiana, this matter has been fully determined by the highest Court of the State in the case of *Cochran et al. v. Louisiana State Board of Education et al.*, reported in 168 La. 1030, 123 So. 664. Hence, this Court cannot be further concerned with the question of whether or not these Acts violate the Louisiana Constituion, but it must concern itself solely with these two questions:

First, whether the expenditure of the "public monies" of Louisiana for the purpose of free textbooks for the children of the State deprives petitioners of their property without due process of law; and secondly, whether this same expenditure, by any stretch of imagination, tends to destroy the Republican Form of Government guaranteed to the states by the Federal Constitution under the provisions of Section 4 of Article IV of the Federal Constitution, readings as follows:

> "The United States shall guarantee to every state in the Union a Republican Form of Government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

In our humble estimation, plaintiffs have fallen into two fundamental errors:

> **First:** That the public school funds of the State are being illegally and unconstitutionally expended for the purpose of furnishing free textbooks to the school children attending private and sectarian schools.

Assuming that plaintiffs have fallen into this error, our answer is:

That Act 109 of the Legislature of Louisiana of 1921, p. 233, which is set forth in full in the Appendix to this brief, provides in its title as follows:

> "To provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation; fixing the rates; and setting forth the purposes for which said levying is made; and prescribing the method of assessing and collecting the same; and enforcing payment thereof."

Under the provisions of Section 4 of said Act, paragraph "D", p. 234, it is provided as follows:

> "Two and fifty-hundredths (2.50) mills on the dollar, authorized by Section 14 of Article XII of the Constitution of Louisiana of 1921, be known as the 'Public School Fund' and to be used for the

support of the public schools of the State; provided, that out of the portion of said taxes collected in the City of New Orleans, $50,000.00 shall be paid annually to the Isaac Delgado Trade School."

Section 14 of Article XII of the Constitution of Louisiana of 1921, p. 94, reads as follows:

"Sec. 14. The public school funds of the State shall consist of:

First, The proceeds of two and one-half mills of the taxes levied and collected by the State; provided, that out of the portion of said taxes collected in the city of New Orleans fifty thousand ($50,000.00) dollars shall be paid annually to the Isaac Delgado Trade School.

Second, The proceeds of the poll tax, which shall be applied exclusively to the support of public schools in each parish in which collected, and shall be paid by the tax collector directly to the parish school board.

Third, The interest on the proceeds of land heretofore or hereafter granted by the United States for school purposes, and the revenues derived from unsold portions thereof.

Fourth, All funds and the proceeds of lands and property, other than unimproved lands, heretofore or hereafter bequeathed, granted, or escheated to the State, not designated for any other purpose.

Fifth, Such other funds as the Legislature may appropriate.

All school funds, except the poll tax and the interest on proceeds of land granted by the United States for the support of public schools, shall be distributed to each parish in proportion to the number of children therein between the ages of

six and eighteen years. The Legislature shall provide for the enumeration of educable children."

Section 21 of Act 100 of the Legislature of Louisiana of 1922, p. 211, reads, in part, as follows:

> "The General Fund of the Parish School Board shall consist of the State Current School Fund, Poll Taxes, Fines, Bond Forfeitures, Police Jury appropriations, proceeds from the sale of timber or income from oil or gas, (thereon) in short, all school funds except those voted or appropriated for special purposes."

Hence, we believe we have made it clear just exactly what the Legislature of the State and the Constitution of the State has designated as funds belonging to the public school system of the State.

The Court must bear in mind that the appropriation for the purchase of free textbooks was not made out of any funds dedicated to the General School Fund of the State, nor out of the General Fund of the State, either by the Legislature or by the Constitution of the State.

The Court must further bear in mind that these plaintiffs do not urge that they are engaged in any of the businesses upon which a severance tax is levied by the State of Louisiana. Further, that they do not contest the validity or legality of the Severance Tax Act. Their sole complaint is that the severance tax is being diverted from the public schools of the State for the purpose of supplying textbooks indiscriminately to the school children of the State, whether attending public, private or sectarian schools.

A severance tax has been levied for years by the State of Louisiana upon certain persons severing natural resources of the State from its soil. The tax is not confined to oil, but it applies to timber, gravel, oyster shell reefs, and a variety of its natural resources which hitherto have been utilized indiscriminately by persons or corporations within the State, without a cent of revenue to the State.

Under the very terms of the statutes involved in this litigation, to-wit: Act 100 of the Legislature of Louisiana of 1928, p. 114, and Act 143 of the Legislature of Louisiana of 1928, p. 188, it is provided that this Severance Tax Fund, which constitutes no part of the General Fund of the State, nor of the Public School Funds dedicated to the State of Louisiana, except as hereinafter mentioned, shall first be dedicated to the purchase of school books for school children, and the balance thereafter shall be applied to the Public School Funds of the State. (See Act 100 of 1928, p. 114.)

In the General Appropriation Bill of the State, which is Act 143 of 1928, at page 188, the Court will find that the Legislature appropriated:

> "For purchase of free school books for the use of School Children of this State, to be expended by the State Board of Education of Louisiana as provided by House Bill No. 90 of 1928, (which is Act 100 of 1928) or so much thereof as may be necessary _____ $750,000.00
>
> (After the above appropriations have been paid or provided for, then the balance from said Severance Tax Fund to be transferred to the Cur-

rent School Fund as provided by House Bill No. 90 of 1928)."

Act 100 of 1928, p. 114.

It is, therefore, very clear that the Legislature, in providing for the purchase of free textbooks for the children of the State, has not used one dollar of the Public School Funds of the State for that purpose, nor a dollar of the General Fund of the State, but has done so by appropriating funds derived from its severance taxes which it might have utilized for any purpose whatsoever not inconsistent, of course, with the Constitutions of the State and of the Union.

In *Pierce v. Society of Sisters*, reported in 268 U. S., p. 510, it was said in syllabus No. 1, that:

> "1. The fundamental theory of liberty upon which all governments of this Union rest excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. Id.

The second fundamental error to which we adverted and which we sincerely believe plaintiffs have fallen into, is their contention that the State, in providing free textbooks to its children, is expending its money for the benefit of "private and sectarian schools", in violation of Section 13 of Article XII of the Constitution of Louisiana of 1921, which reads as follows:

> "Sec. 13—No public funds shall be used for the support of any private or sectarian school."

And further, that these funds were being used, loaned, pledged or granted to private persons, in violation of the

provisions of Section 12 of Article IV of the Constitution of Louisiana, reading, in part, as follows:

> "The funds, credit, property or things of value of the State or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation, public or private; * * *."

The assumption of appellants being, of course, that the purchase of free textbooks for the children of the State was an expenditure of the money of the State for the support of private and sectarian schools, in violation of Section 13 of Article XII of the Constitution of Louisiana of 1921, and was further the loaning and pledging of funds of the State for the benefit of private persons, in violation of Section 12 of Article IV of the Constitution of Louisiana of 1921; whereas, the free schooling, or even the furnishing of free textbooks to the school children of the State is not so much a right granted to the pupils as a duty imposed upon them for the public good, and further, a duty likewise resting upon the commonwealth to see that its citizens are not permitted to grow up in ignorance and be deprived of the benefits of even a rudimentary education, simply because of their poverty, when the State in its affluence, without depriving anyone of anything, can well afford to supply them the means of obtaining those simple and fundamental instructions which, of necessity, will tend to develop them into worthy and upright citizens.

In the case of *The Pacific States Telephone & Telegraph Co. v. Oregon*, 223 U. S. 118, the fifth paragraph of the syllabus reads as follows:

> "Where the claim that one taxed under a State statute is deprived of property without due process of law is not based on any inherent defect in the law, or infirmity of power of State to levy it, but on the ground that the government of the State is not republican in form, the question is not within the jurisdiction of the courts."

This represents completely the position of the four plaintiffs in this case. They claim in their petition that they are being deprived of property without due process of law, but they do not and dare not base it upon any inherent defect in the law, that is to say, the Severance Tax Law, which they recognize and admit to be valid; or the infirmity of power of the State to levy it, which they cannot deny because the authority of the State of Louisiana to impose a severance tax remains unquestioned, judicially, even until this day. But on the ground that the government of the State is not republican in form, they seek to impress this Court with the fact that they have a right to complain; whereas, in this very decision just quoted this Honorable Court has laid down the doctrine that the question, being purely political, is not within the jurisdiction of the courts.

The case hereinabove quoted is referred to in the case of *Marshall, Governor of the State of Indiana, v. Dye*, 231 U. S. 250, and in the second paragraph of the syllabus of the latter case, this Court held:

> "The enforcement of the provision of Article IV, Section 4 of the Constitution, that the United States shall guarantee to every State in the Union a Republican Form of Government, depends upon political and governmental action through the

powers conferred on the Congress and not those conferred on the courts."

*Pacific Tele. Co. v. Oregon*, 223 U. S. 118.

In the case of *Mountain Timber Co. v. Washington*, 243 U. S., p. 219, Syllabus 11, this Court held:

> "Since the question whether a state law deprives of a right secured by the Constitution depends not upon how the law is characterized but upon its practical operation and effect, and since the Constitution does not require a separate exercise of the state powers of regulation and taxation, the crucial question is whether this legislation, be it regarded as an exercise of the power of regulation, or a combination of regulation and taxation, clearly appears to be not a fair and reasonable exertion of governmental power but so extravagant or arbitrary as to constitute abuse of power."

In the case of *State of Ohio ex rel. E. H. Bryant v. Akron Metropolitan Park, District for Summit County*, reported in Vol. 8 of the Advance Opinions of the U. S. Supreme Court, 1929 Term, 74 L. ed. ——, at page 336 this Court held:

> "The question with respect to the validity, from a Federal standpoint, of the provision of the state Constitution that no law shall be held unconstitutional by the supreme court of the state without a concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional, was not raised in these suits until after the judgments of affirmance by the supreme court. But it is insisted that the point could not have

been taken earlier, as in advance of the affirmance on a vote of the minority the question would have been speculative. Hence, it is said that the Federal question was raised at the earliest opportunity. *Saunders v. Shaw*, 244 U. S. 317, 320, 61 L. ed. 1163, 1166, 37 Sup. Ct. Rep. 638.

Assuming that the Federal question is thus brought here, we find it to be without merit.

As to the guaranty to every state of a republican form of government (Sec. 4, Art. 4), it is well settled that the questions arising under it are political, not judicial, in character and thus are for the consideration of the Congress, and not the courts. *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U. S. 118, 56 L. ed. 377, 32 Sup. Ct. Rep. 224; *O'Neill v. Leamer*, 239 U. S. 244, 248, 60 L. ed. 249, 263, 36 Sup. Ct. Rep. 54; *Ohio ex rel. Davis v. Hildebrant*, 241 U. S. 565, 60 L. ed. 1172, 36 Sup. Ct. Rep. 708; *Mountain Timber Co. v. Washington*, 243 U. S. 219, 234, 61 L. ed. 685, 694, 37 Sup. Ct. Rep. 260, Ann. Cas. 1917D, 642, 13 N. C. C. A. 927.

As to the due process clause of the 14th Amendment it is sufficient to say that, as frequently determined by this court, the right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance. *McKane v. Durston*, 153 U. S. 684, 687, 38 L. ed. 867, 868, 14 Sup. Ct. Rep. 913; *Pittsburgh, C. C. & St. L. R. Co. v. Backus*, 154 U. S. 421, 427, 38 L. ed. 1031, 1036, 14 Sup. Ct. Rep. 1114; *Reetz v. Michigan*, 188 U. S. 505, 508, 47 L. ed. 563, 566, 23 Sup. Ct. Rep. 390; *Rogers v. Peck*, 199 U. S. 425, 435, 50 L. ed. 256, 260, 26 Sup. Ct. Rep. 87; *Standard Oil Co. v. Missouri*, 224 U. S. 270, 286, 56 L. ed. 760, 769, 32 Sup. Ct. Rep. 406, Ann. Cas. 1913D, 936."

In the case of *Beach v. Bradstreet*, reported in 82 Atl. 1030, Syllabus 3, the Court said:

"Under Const. U. S. art. 4, Section 4, which provides that the United States shall guarantee to every state a republican form of government, and Const. U. S. Amend. 14, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, taxes may be imposed only to raise money for a public governmental use or purpose, as the republican form of government forbids the raising of taxes for any but public purposes."

(Ed. Note—For other cases, see *Taxation, Cent. Dig.*, Sec. 67; *Dec. Dig.*, Sec. 38.)

We cannot imagine a greater public purpose than that which unquestionably devolves upon the State to educate its children. It provides for the dipping of its cattle to eliminate the ticks; it provides for the dissemination of vaccine to all persons of all sects, all denominations, all races, and all creeds to prevent smallpox. It has even contributed monies to hatcheries for fish. It has and is authorized by the Legislature to transport children to school, regardless of denomination or creed; to provide for free passage of school children over toll bridges and ferries, and dozens of other statutes looking toward the welfare of the State, affecting either its health, morals or public policy, may be cited. Why, then, should the fact that the State, out of a special fund which does not encroach upon any of the other revenues of the State be condemned for supplying to the school children of the State those books which are needed under the educational system of the State, and how unreasonable, even illegal and unconstitutional, would it be to say, that only those who attend

the public schools shall be supplied with the facilities of learning? Indeed, it is our impression that, under the Constitution of the State of Louisiana, if it had been stipulated that free books should be furnished only to those who attended the public schools of the State it would have been clearly unconstitutional, since there would have been an emphatic discrimination in favor of the children attending the public schools as against those who might desire to attend private schools, and, as already pointed out in this brief, no parent may be compelled by any court to send his child to any particular school, public, private or sectarian.

Further quoting from the case of *Beach v. Bradstreet, supra*, paragraph 6 of the Syllabus reads as follows:

> "A tax levied by the Legislature is for a public purpose, so as to render it constitutional, where it is for the support of government, or for any of the recognized objects of government, or if its proceeds will directly promote the welfare of the community in equal measure."
>
> (Ed. Note—For other cases, see *Taxation, Cent. Dig.*, Sec. 67, *Dec. Dig.*, Sec. 38.)
>
> (For other definitions, see *Words and Phrases*, Vol. 6, pp. 5815-5817; Vol. 8, p. 7773.)

We particularly direct the attention of this Honorable Court to this expression just hereinabove quoted, for the reason, as already stated, that there can be no greater, nobler nor more important public purpose than the education of the citizens of this country. There can be no question that education is, "a recognized object of govern-

ment", nor can there be any dispute that education "will directly promote the welfare of the community in equal measure."

Appellants complain of the fact that they are being deprived of their infinitesimal *pro rata* of a certain sum which the State of Louisiana has appropriated out of its Severance Tax Fund for the purchase of free textbooks. Is it not true that these four plaintiffs are affected just as every other citizen of the State is affected? That is to say, they are suffering no hardship or burden which is not commonly borne by every other citizen of the State. If they are entitled to their individual percentage of the Severance Tax Fund of the State, as citizens of the State, is it not true that every other citizen of the commonwealth is entitled to the same *pro rata* and to the same percentage? And do they suffer to any greater extent, by reason of the allocation of these funds for the purchase of free textbooks for the school children of the State, than does every other citizen of the State, be he or she Jew or Gentile? If those of certain religious faiths, who provide private and sectarian schools for those of their particular denomination, are entitled to as much out of the Severance Tax Fund of the State of Louisiana as these plaintiffs are, then how can plaintiffs contend that they are suffering a deprivation of their property without due process of law?

In *Morgan v. Graham*, 1 Woods', p. 125, the Court said:

> "It is a general rule that a man cannot maintain a private suit for an injury which he sustains in common with every other citizen. To allow such actions would promote endless litigation. Every

> dissatisfied person in the community would institute an action for his supposed grievance. Public officers would be subjected to intolerable prosecution. They would be so harassed thereby, that no competent person would be willing to enter upon any office of general importance. It is not in this way that the public officers are to be called in question for a dereliction of their official duties. The proper administration of the government in its several departments cannot be enforced by private actions brought by any taxpayer or any voter interested in the good government of the country."

Even stronger is the language of this Court in *Commonwealth of Massachusetts v. Andrew W. Mellon*, 262 U. S. 1078, 67 L. Ed. 447, paragraph 6 of the syllabus of which case reads, as follows:

> "6. One who invokes the power of the court to declare an act of Congress to be unconstitutional must be able to show not only that the statute is invalid, but that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

If appellants suffer at all, they merely suffer in some indefinite way in common with the people generally, since they have no right or privilege on the property or the money coming from the Severance Tax Fund of the State of Louisiana, superior to, or of greater priority than, that of any other citizen of the State. If their infinitesimal loss, which would probably approximate 50 cents per individual per annum, is sufficient to deprive them of their property without due process of law, then this same stat-

ute deprives every other citizen of the State of the same amount in the same manner, and hence appellants suffer, if suffer they do, in common with the people of the State generally.

*Smith v. Donahue*, 195 N. Y. Sup. 715, is a case which appears to be regulated strictly by a statute of the State of New York, and we therefore consider it inapplicable, since it appears that the statute in controversy there expressly prohibits the furnishing of textbooks to persons attending parochial schools.

We respectfully direct the attention of this Honorable Court to the fact that the Louisiana statute makes no distinction between those who attend the various school of the State, and merely provides for the furnishing of books to the children of the State in order that they may obtain an education which the State requires them to obtain by statute, and is absolutely responsible for, to the extent that the State shall see that its children are educated.

However, in the body of the opinion hereinabove referred to, at page 70, it was said by the Court:

> "It was the education of the youth that the state has required, and not this education necessarily in the public schools; but, if the education was to be had in a school other than the public schools, then it was necessary that those schools should be under the inspection of the state authorities. The state authorities have control of the education of the pupil and to require its attendance upon school. In no sense does the state assume to employ teachers of schools other than the public schools; but it insists that in all schools other than the public schools, where children of compulsory school age

are attending, the teachers must have the required qualifications, and there must be examinations to test the work done, and there must be attendance officers to insure attendance."

We respectfully direct the attention of this Honorable Court to the fact that the school books supplied to the school children of Louisiana are supplied by and through the State Board of Education, and only the books prescribed by said Board, whether they be used in public, private or sectarian schools, are the books which are supplied under the statutes of Louisiana providing for the furnishing of free textbooks to school children. (See Addition to record—Testimony of State Superintendent Harris and annexed documents), which we are unable to cite specifically in this brief, for the reason that we have not yet been supplied with a printed copy of this Addition to the Record.

## AUTHORITIES OF APPELLANTS IN SUPPORT OF THEIR CONTENTION THAT PRIVATE SCHOOLS DO NOT COME UNDER THE CATEGORY OF PUBLIC USE.

An examination of the cases cited by appellants in their brief, in which they argue that private schools do not come under the category of public use (p. 12, *et seq.*), shows that in no instance was the appropriation made in aid of the children of the State, or even of the children of any particular school. In every instance the appropriation for aid was given to a college, academy, private school, or to some corporation or association organized

for some eleemosynary purpose.

For instance:

*Curtis v. Whipple*, 24 Wis. 350, concerns a tax to aid the "Jefferson Liberal Institute."

*Jenkins v. Andover*, 103 Mass. 94, contemplates taxation to aid in rebuilding "Punchard Free School."

*Underwood v. Wood*, 93 Ky. 177, contemplates aid to an academy.

*Smith v. Donahue*, 195 N. Y. Sup. 715, concerns books procured by the Board of Education and delivered to schools. The statute there involved specifically required that the books should be furnished to children attending the public schools, and the attempt to furnish them to other schools was, therefore, recognized by the Court as a violation of the New York statute. That case is easily differentiated from the present case, in that the Louisiana statute requires that the textbooks shall be furnished to all the school children of the State.

*Dakota Synod v. State*, 2 S. D. 366. contemplates payment by the State to a sectarian university for the tuition of a designated class of students.

*Williams v. Stanton Graded Common School District*, 173 Ky. 708, contemplates direct payment to a college in consideration of tuition to certain students.

*State v. Switzler*, 143 Mo. 287, contemplates payment to a university for the use of individuals.

The above covers practically all of the cases cited by appellants on this subject, and are manifestly not applicable to the case at bar.

The case of *Loan Association v. Topeka*, 20 Wall. 655, 22 L. ed. 455, contemplates aid by way of taxation to certain manufacturers, particularly to a bridge and iron company, to encourage the establishment of shops in the city of Topeka.

This case is not in point, but even if it were, it was decided fifty-six years ago, and was a border line case even at that time, because the court held then that the line which distinguishes a public use from a private use is not easy to discern.

We would add, quoting the decision in *Mutual Oil Company v. Zehrung*, 11 F. (2d) 887, (l.c.) 891:

> "In many instances states and municipalities have in late years seen fit to enter upon projects to promote the public welfare, which in the past have been considered entirely within the domain of private enterprises."

In other words, the police power of the State is with propriety being considerably extended.

Beveridge, in his Life of Chief Justice Marshall, (Vol. 1, p. 162), says that Marshall could not get a permit from the State of Virginia to be vaccinated and had to make a long trip on foot and on horseback to Philadelphia for that purpose. The police power of the State now is extended in Louisiana and in practically all of the states, so as to embrace compulsory vaccination, testing of eyes, examinations for nose and throat diseases, etc., to all the children of the State, including those who attend public schools, private schools and no schools at all.

The answer to appellants' brief has been given many times heretofore in this brief, but can be condensed again into the statement that the furnishing of free textbooks to the children of the State is not a grant in aid of the schools nor of individuals, but is in aid of education, a matter of public welfare, of public concern and benefit, and for a distinct public purpose more important by far, we imagine, than anything the State might attempt to do for its citizens.

## POLICE POWER.

### *EDUCATION IS ONE OF THE PURPOSES FOR WHICH THE POLICE POWER OF THE STATE MAY BE EXERCISED.*

In *Barbier v. Connolly*, 113 U. S. 27, in the second paragraph of the syllabus, it is set forth that the Fourteenth Amendment of the Constitution does not impair the police power of the State.

Article XIX, Section 18, of the Constitution of Louisiana of 1921, provides:

> "Sec. 18. The exercise of the police power of the State shall never be abridged."

This is identical with Article 263 of the Constitutions of Louisiana of 1898 and 1913, and in perfect consonance with similar provisions in prior constitutions.

The police power of the State extends to the protection of lives, limbs, health, comfort, morals, and quiet of society. While this definition is incomplete insofar as it might

attempt to cover what is meant by the police power, later decisions have enlarged upon this definition so as to accept the doctrine that the term "police power" authorizes the prescription of regulations to promote health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and all of its wealth and prosperity.

The following authorities bear out this interpretation:

*Holden v. Hardy*, 169 U. S. 366.
*Dent v. West Virginia*, 129 U. S. 114.
*Mulger v. Kansas*, 123 U. S. 623.
*Munn v. Illinois*, 94 U. S. 113.
*Budd v. New York*, 143 U. S. 517.
*Smyth v. Ames*, 169 U. S. 466.

So that, education is certainly one of the purposes for which the police power of the State may be exercised, and the authorities quoted in this brief are not in conflict with the theory that the State, in the legitimate exercise of its police power may provide for the education of its children just as it is entitled to provide for the good morals, peace, and good health of the members of the commonwealth.

We repeat that education is supreme as a beneficial measure in the interest of the citizenship of any State. Where there is no education, necessarily there is dense ignorance and superstition. But in educated communities the burden upon the State to provide laws for its health, peace and morals is lessened because the enlightenment of education trains its citizens to the point where many things can be accomplished without, at the last resort, depending upon the State to improve health, peace, morals, or to increase the industries of the State, or to de-

velop its resources and to utilize its wealth and prosperity.

As a closing statement to this particular heading, we respectfully quote from *Barbier v. Connolly*, 113 U. S., p. 31, wherein a discussion of the Fourteenth Amendment was under consideration, reading as follows:

> "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its

operation it affects alike all persons similarly situated, is not within the amendment."

Hence, we again respectfully direct the attention of this Court to the fact that no nobler public purpose, to promote the general good, could be assumed by the State than to provide for the education of its children. Certainly, this is more necessary, we think, than supplying water for the sprinkling of streets, lighting districts, opening parks, or such other purposes (important as they are) as this Court and all other courts have time and again recognized as a legitimate exercise of the police power.

## RENEWAL OF MOTION TO DISMISS.

Without attempting to argue the Motion to Dismiss hitherto filed by the appellees in this case, we respectfully direct the Court's attention to the brief setting forth statement in support of motion to dismiss for want of jurisdiction, and we now, if permissible, desire to incorporate in this reference the original Motion to Dismiss together with the authorities submitted in support thereof, brief in behalf of which has already been filed with this Honorable Court.

## CONCLUSION.

The appellees are convinced, first, that this Honorable Court has no jurisdiction. Secondly, that if it has jurisdiction the appellants have failed to establish any right or interest which they have, sufficient to convince this Court that such interest as they may have is different from that which any other citizen of the State of Louisiana has in this particular proceeding.

If this Court believes that appellees are being deprived of property without due process of law, then this Court must necessarily concede that every other person of the State is similarly situated and the authorities are plain and clear that where a common injury, if injury there is, is suffered by all the citizens equally, there is no justification for the interference of the Federal Tribunal.

We further point out, that the third contention of appellants to the effect that the enforcement of the free Textbook Law of Louisiana tends to destroy the Republican Form of Government guaranteed to each State by the Federal Constitution, Sec. 4, Article IV, is almost a mythological proposition, since that Article and section seems to have very little bearing upon the proposition submitted by the appellants. But if it should have, this Court has already determined that this particular question is purely political and not one for judicial determination.

We, therefore, respectfully pray that the judgment of the lower Court be affirmed at the cost of appellants.

Respectfully submitted,

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# APPENDIX

## TRANSPORTATION ON ALL STREET RAILWAYS AND SUBURBAN RAILROADS FOR CHILDREN ATTENDING SCHOOLS.

Act 238 of 1916, p. 507, amending and re-enacting Sections 1 and 2 of Act 197 of 1914.

## FERRIES REQUIRED TO TRANSPORT SCHOOL CHILDREN FREE OF CHARGE.

Act 142 of 1918, p. 247, and also Section 61 of Act 100 of 1922, p. 204.

## TRANSPORTATION OF SCHOOL CHILDREN AT EXPENSE OF PARISH SCHOOL BOARDS.

Section 29, Act 100 of 1922, p. 213, provides as follows:

> "The Parish School Boards shall have authority to provide transportation for children living more than two miles from a school of suitable grade."

A school of suitable grade, within the intendment of this Act, is any school, public or private, which the State Board of Education recognizes as within the rules and regulations which it prescribes for the education of children.

## FISH HATCHERIES.

The Acts relating to appropriations for fish hatcheries are, as follows:

Act 81 of 1926, p. 104,
Act 109 of 1926, p. 169,
Act 185 of 1926, p. 292.

The appropriation in Act 109 of 1926, p. 169, has just been upheld by a decision of the Supreme Court of this State rendered on March 31, 1930, not yet reported.

## DIPPING OF CATTLE.

The statutes of the State, with reference to the eradication of the tick, are incorporated in Acts 124 of the General Assembly of Louisiana of 1916, p. 285; Act 25 of the Extra Session of the General Assembly of Louisiana of 1917, p. 34; and Act 254 of the General Assembly of Louisiana of the year 1920, p. 491.

## VACCINATION.

With reference to the vaccination of school children, see Article 20, Sanitary Code of Louisiana, as amended. p. 11, Sections "b" and "c".

## ACT No. 109.

House Bill No. 154 By Mr. Dreyfus.

### AN ACT

To provide an annual revenue for the State of Louisiana, by the levying of annual taxes upon all property not exempted from taxation; fixing the rates; and setting forth the purposes for which said levy is made; and prescribing the method of assessing and collecting the same; and enforcing the payment thereof.

SECTION 1. Be it enacted by the Legislature of Louisiana, That for the calendar year one thousand nine hundred and twenty-two (1922), A. D., and each succeeding

calendar year, there are hereby levied for State purposes, annual taxes amounting in the aggregate to five and one-quarter mills (.005¼) on the dollar of the assessed value of all property situated within the State of Louisiana, except such as is especially exempted from taxation by law, and all property subject to taxation shall be assessed for State purposes, as herein provided, at actual cash value.

SECTION 2. That the term "property" as herein used shal embrace and include every form, character and kind of property, real, personal, and mixed, tangible and intangible, corporeal and incorporeal, and every share, right, title or interest therein or thereto and every right, privilege, franchise, patent, copy-right, trade-mark, certificate, or other evidence of ownership or interest; bonds, notes, judgments, credits, accounts, or other evidence of indebtedness, and every other thing of value, in possession, on hand, or under the control, at any time during the calendar year for which taxes are levied, within the State of Louisiana, of any person, firm, partnership, association of persons or corporation, foreign or domestic, whether the same be held, possessed, or controlled, as owner, agent, pledgee, mortgagee, or legal representative or as president, cashier, treasurer, liquidator, assignee, master, superintendent, manager, sequestrator, receiver, trustee, stakeholder, depository, warehouseman, keeper, curator, executor, administrator, legatee, heir, beneficiary, parent, attorney, usufructuary, mandatory, fiduciary, or other capacity, whether the owner be known or unknown.

SECTION 3. That there shall be exempt from taxes levied by this act all property which is declared to be exempt from taxation by Section 4 of Article X of the Con-

stitution of 1921, and no other; but all real estate, exempt as well as taxable, shall be valued at actual cash value, listed on the assessment rolls and submitted to the Louisiana Tax Commission.

SECTION 4. That the said annual taxes hereby levied for the calendar year one thousand nine hundred and twenty-two (1922), and each succeeding calendar year, are for the following purposes, to-wit:

First: One and fifteen hundredths (1.15) mills on the dollar, to be known as the "State Bond and Interest Tax Fund", for the following purposes:

a. To pay the interest on the new serial gold bonds of the State of Louisiana, authorized by Article 324 of the Constitution of 1913, and by Article XXII, Section 1, paragraph 5, of the Constitution of 1921, and the gradual retirement of said bonds, in accordance with the afore-mentioned articles.

b. To pay the interest on the "Free School Fund", as provided by Article XII, Section 19, of the Constitution of 1921.

c. To pay the interest on the "Seminary Fund", as provided by Article XII, Section 20, of the Constitution of 1921.

d. To pay the interest on the "Agricultural and Mechanical College Fund", as provided by Article XII, Section 21, of the Constitution of 1921.

Provided, That when the revenue collected from the foregoing levy shall exceed the sum of seven hundred thousand dollars ($700,000.), in any one year, the State Auditor and the State Treasurer are hereby authorized and directed to transfer the excess over said amount to the "General Fund".

Second: Two and fifty hundredths (2.50) mills on the dollar authorized by Section 14 of Article XII of the Constitution of 1921, to be known as the

"Public School Fund," and to be used for the support of the public schools of the State: Provided, that out of the portion of said taxes collected in the city of New Orleans, fifty thousand dollars ($50,000) shall be paid annually to the Isaac Delgado Trade School.

Third: Seventy-five hundredths (0.75) of one mill on the dollar authorized by Section 3 of Article XVIII of the Constitution of 1921, to be known as the "Confederate Veteran Fund", to provide pensions for Confederate Veterans and their widows; Provided, that should the revenues collected from this levy in any one year exceed the amount necessary to provide such pensions as may be allowed by law to Confederate Veterans and their widows under the authority of the aforementioned article, the excess over such amount shall be transferred to the "General Fund".

Provided, further, that this tax shall be assessed and collected without charge.

Fourth: Thirty-two hundredths (0.32) of one mill on the dollar to be known as the "General Engineer Fund", for the maintenance and repair of levees.

Fifth: Fifty-three hundredths (0.53) of one mill on the dollar, to be known as the "General Fund", for the following purposes:

a. To carry on and maintain the government of the state and the public institutions thereof.

b. To suppress insurrection, repel invasion or defend the state in time of war.

c. To preserve the public health.

d. To establish markers or monuments commemorative of the services of Louisiana soldiers.

e. To maintain a memorial hall in New Orleans for the collection and preservation of relics and memorials of wars.

SECTION 5. That in addition to the taxes levied in the amount and for the purposes designated in the foregoing sections of this act there is hereby levied for the calendar year one thousand nine hundred and twenty-two (1922), A. D., and each succeeding calendar year, for State purposes, to be paid into the General Fund, an annual tax of twenty-five mills (.025) on the dollar of the assessed value of all rolling stock of non-resident persons, firms, partnerships, companies, associations or corporations, having no domicile in the State of Louisiana, operated over any railroad in the State of Louisiana within or during any year for which such tax is levied; and the term "rolling stock" as used herein shall include any kind of locomotive, car or sleeping car used for freight or passenger purposes that may be so operated over any railroad within the State.

SECTION 6. That the rolling stock of persons, firms, partnerships, companies, associations or corporations subject to the additional tax levied by the foregoing section shall be assessed at actual cash value by the Louisiana Tax Commission upon an assessment roll to be prepared by it, and the taxes levied by Section 1 and Section 5 of this act shall be extended upon such roll by the said Louisiana Tax Commission. Such roll shall be made in triplicate, and it shall be the duty of the Louisiana Tax Commission, on or before the first day of October of each year, to file one copy thereof with the Auditor of Public Accounts of the State of Louisiana and one copy with the Sheriff and Ex-Officio Tax Collector of the Parish of East Baton Rouge, retaining one copy in its office. The correctness of the several copies of such roll shall be duly certified by the Louisiana Tax Commission.

SECTION 7. That it shall be the duty of the Sheriff and Ex-Officio Tax Collector of the Parish of East Baton Rouge to collect the taxes extended upon the roll so made and filed in his office by the Louisiana Tax Commission, and make settlement with the State Auditor and State Treasurer as provided by law for other State taxes collected by him.

SECTION 8. That all of the provisions of Act No. 9 of the Extra Session of the General Assembly of 1917 relating to the assessment and taxation of rolling stock of persons, firms, partnerships, companies, associations or corporations, whether domiciled within or without the State of Louisiana, in so far as they may be applicable hereto and not inconsistent herewith, shall be and remain in full force and effect.

SECTION 9. That all existing laws and parts of laws relating to the assessment, levy, review, equalization and collection of taxes, and procedure for the enforcement of the same, not inconsistent herewith, are hereby declared to be and shall remain in full force and effect; and all laws or parts of laws in conflict herewith are hereby repealed.

Approved: By the Lieutenant-Governor and Acting Governor. November 18, 1921.

A true copy:

JAMES J. BAILEY,
Secretary of State.

## ACT NO 140

House Bill No. 411

By Mr. Dreyfus, Chairman of The Ways and Means Committee, Substitute for House Bill No. 15 by Mr. Schell.

### AN ACT

To carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided.

SECTION 1. Be it enacted by the Legislature of Louisiana, That for the year 1923, and for each subsequent year, taxes as authorized by Section 21 of Article 10 of the Constitution of 1921, are hereby levied upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and

ores; also marble, stone, gravel, sand, shells and other natural deposits.

Such taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance, and become due and exigible quarterly, as herein provided; and they shall operate as a first lien and privilege on such natural resources, which lien and privilege shall follow said natural resources into the hands of third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state.

SECTION 2. For the purposes of taxation natural resources severed from the soil or water shall be divided into two classes, on which taxes are hereby levied and shall be paid at the following rates:

On oil and gas, three per centum (3%) of the gross market value of the total production thereof:

On all other natural resources, two per centum (2%) of the gross market value of the total production thereof.

For the purposes of this Act said gross market value of each such product or natural resource shall be computed in its unmanufactured state, and as of the time when, and at the place where, it was severed or taken from the soil or water.

SECTION 3. All such taxes shall be collected quarterly by the respective sheriffs and Ex-Officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and in the same manner and

at the same time as required by law for other State collections.

When so paid into the State Treasury, two-thirds (2/3) of the severance taxes collected on oil and gas, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the Auditor and Treasurer to a special fund, which is hereby created, to be known as the Severance Tax Fund of the State of Louisiana.

The remaining one-third (1/3) of the severance taxes collected on oil and gas is hereby allocated to the parish from within which such taxes are collected, and shall be credited to such parish by the Auditor and Treasurer, provided such allocation and credit shall not exceed two hundred thousand dollars ($200,000.00) in any parish in any one year. When this limit of two hundred thousand dollars ($200,000.00) shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created.

SECTION 4. The amounts allocated and credited to each oil and gas producing parish under this Act, shall be apportioned and distributed quarterly among the parish schools, and such district governing authorities as have jurisdiction over the territory from within which such resources are severed and tax collected.

Such apportionment and distribution shall be made within the first fifteen days of each calendar quarter by the Auditor and Treasurer in proportion to the amount of advalorem property taxes payable to each such governing authority as shown by the last completed assessment

roll, and shall cover all amounts allocated and credited to the parishes during the preceding quarter.

SECTION 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons during the last preceding quarter-annual period, showing the kind of natural resources so severed or produced, the gross quantity and actual cash value thereof, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each such natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report, each person, firm, corporation or association of persons shall concurrently file a duplicate thereof with the tax collector of the parish where said natural resource is taken or severed from the soil or water; and shall pay to the said tax collector a tax of 3% on the gross market value of the total amount of oil and gas, and a tax of 2% on the gross market value of the total amount of all other natural resources severed from the soil or water during the preceding three months.

SECTION 6. Except as otherwise provided in this Act, the making of said reports, and the payment of said taxes, shall be by those actually engaged in the operation of severing, whether it be the owner of the soil, or other person severing from the soil of another, or the owner of any such natural resource severing from the soil of another.

The reporting taxpayer shall collect or withhold out of the value of the products severed, the proportionate parts of the total tax due by the respective owners of such natural resources at the time of severance.

SECTION 7. Every person, firm, corporation or association of persons actually engaged in severing oil, gas, or other natural resources from the soil or water, or actually operating oil or gas property, or other property from which natural resources are severed, under contracts or argeements requiring payment direct to the owners of any royalty interest, either in money or in kind, is hereby authorized, empowered and required to deduct from any amount due, or from anything due, the amount of the tax herein levied before making such payments.

SECTION 8. When any person, firm, corporation or association of persons actually engaged in severing oil or gas, or other natural resources from the soil or water, under contracts or agreements requiring payments direct to any owner of the proportionate share of such natural resource, as set out in the preceding section, shall sell such oil or gas, or other natural resource to any person, firm, corporation or association of persons, under contracts or agreements requiring such purchasers to pay all owners of such natural resources direct then, the person, firm, cor-

poration or association of persons actually severing such natural resources from the soil or water, or actually operating such oil or gas property, may not be required to deduct the tax herein levied, but in which event such deduction shall be made by the purchaser before making payments to each owner of such oil, gas or other natural resources; provided that nothing herein shall be construed as releasing the person, firm, corporation or association of persons severing the products from liability for the payment of said taxes.

SECTION 9. Every person, firm, corporation or association of persons purchasing oil, gas or any other natural resources severed from the soil or water, under contracts or agreements requiring such purchaser to make payment direct to the owners of such oil, gas, or other natural resource, is hereby authorized, empowered and required to deduct from any amount due any owner of such natural resource the amount of the tax levied by the provisions of this Act before making such payments.

All persons, firms, corporations or associations of persons required to deduct from amounts due to others the tax herein levied shall file with the Supervisor of Public Accounts, and with the tax collector of the parish where such natural resource is severed from the soil or water, the reports herein required, and shall at the same time pay to the said tax collector the amount of the tax thus deducted or withheld under the provisions of this Act; provided that nothing herein shall be construed as releasing the person, firm, corporation or association or persons severing the resources from liability for the payment of said taxes.

SECTION 10. Whenever the title to any natural resources being severed from the soil or water is in dispute, or whenever the purchaser of such natural resources, or any person, firm, corporation or association of persons engaged in severing natural resources from the soil or water, or in the actual operation of oil or gas property, shall be withholding payments on account of litigation, or for any other reason, such purchaser of natural resources severed from the soil or water, or person, firm, corporation or association of persons actually engaged in severing such natural resources from the soil or water, or the actual operation of oil or gas properties, is hereby authorized, empowered and required to deduct from the gross amount thus held the amount of the tax herein levied, and to make remittance thereof to the tax collector of the parish wherein such natural resources are severed, as herein provided.

SECTION 11. The owners of natural resources severed from the soil or water are hereby made proportionately responsible for the payment of the tax herein levied, and if the tax due on such natural resources severed from the soil or water is not paid by the purchaser thereof, or by the person, firm, corporation or association of persons actually engaged in severing such natural resources from the soil or water, or operating oil or gas properties, then the Supervisor of Public Accounts shall make, in any manner feasible, and cause to be recorded in the mortgage records of the parish where such natural resources are severed from the soil or water, a statement under oath showing the proportionate amount of the tax due by each said owner of the natural resources severed from the soil or water, which statement when filed for record, shall

operate as a first lien, privilege and mortgage on all of the property from which the resources were severed and on all the property of the respective tax debtors as the case may be, and said property shall be subject to seizure and sale for the payment of the taxes due; provided nothing herein shall be construed as waiving or releasing the privilege on the resources severed wherever found.

SECTION 12. Whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen days thereafter the said Supervisor of Public Accounts shall cause the sheriff and tax collector of the parish wherein such natural resources are severed, to seize and sell, for the payment of such taxes, any property belonging to the tax debtor, or tax debtors, as provided above, which may be found within the jurisdiction of the said sheriff and tax collector.

SECTION 13. The sheriff and tax collector of any parish, when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the tax herein levied on any natural resource severed from the soil or water, after the recordation of the statement required in Section 11, and after the notice required in Section 12 has been given; and all such seizures and sale shall be conducted in the manner and form now required for the sale of similar property for taxes, and penalties shall be imposed and collected as prescribed herein and by general laws.

SECTION 14. All oil and gas leases, interest in minerals, mineral rights, royalty interests, timber contracts, and rights of any kind to the ownership of any natural resource severed from the soil or water, are hereby declared to be subject to seizure and sale for the payment of the tax herein levied in preference to all other claims, liens and privileges.

SECTION 15. The tax provided by this Act shall become delinquent after the date fixed for each quarter-annual report to be filed in the office of the Supervisor of Public Accounts, and from such time shall, as a penalty for such delinquency, be subject to a penalty of 2% per month and other penalties provided in the general revenue laws of this State.

The payment of the severance tax levied by this Act shall be in addition to, and shall not affect the liability of the parties so taxed for, the payment of all state, parochial, municipal, district and special taxes levied upon their real estate and other corporeal property; but no further or additional tax or license shall be levied or imposed upon oil or gas leases or rights; nor shall any additional value be added to the assessment of land by reason of the presence of oil or gas therein or their production therefrom. No severance tax or license shall be levied or imposed by any parish or other local subdivision of the State.

SECTION 16. The Supervisor of Public Accounts shall have the power to require any person, firm, corporation or association of persons engaged in severing natural products from the soil or water to furnish any additional information by him deemed to be necessary for the purpose of computing the amount of said tax; and for said pur-

pose to examine the books, records and files of such person, firm, corporation or association of persons; and, to that end, shall have the power to examine witnesses, and if any such witness shall fail or refuse to appear at the request of the Supervisor of Public Accounts, or refuse access to books, records and files, said Supervisor of Public Accounts shall certify the facts and the name of the witness so failing or refusing to appear, or refusing access to books and papers, to the District Court of the State having jurisdiction of the party; and said Court shall thereupon issue a summons to the said party to appear before the said Supervisor, or his assistant, at a place designated within the jurisdiction of the Court, on a day fixed, to be continued as occasion may require, and give such evidence, and open for inspection such books and papers as may be required, for the purpose of ascertaining whether or not any return so made is the true and correct return as herein required; and whenever it shall appear to the Supervisor that any such person, firm, corporation or association of persons engaged in severing such natural products from the soil or water has unlawfully made an untrue and incorrect return, as herein provided, said Supervisor shall correct the return and shall compute said tax on same, and certify the same to the tax collector for collection.

SECTION 17. If any person, firm, corporation or association of persons shall fail to make a report of the gross production and value of its natural products (upon which the severance tax is herein levied) within the time and in the manner prescribed by law for such report, it shall be the duty of the Supervisor of Public Accounts to examine the books, records and files of any such person, firm,

corporation or association of persons to ascertain the amount and value of such production and to compute the tax thereon as provided herein, and according to the procedure hereinbefore provided, where witnesses refuse to testify, or access to books and papers is refused, and shall add thereto the cost of such examination, together with any penalties accruing thereon.

SECTION 18. Any person who shall intentionally make any false oath to any report required by the provisions of this Act shall be denied guilty of perjury and shall be subject to all penalties prescribed for said crime.

SECTION 19. It is hereby made the duty of the Supervisor of Public Accounts to supervise and enforce the collection of all taxes that may be due under the provisions of this Act; and, to that end, the said Supervisor is hereby vested with all of the power and authority conferred by this Act.

SECTION 20. It is hereby made the duty of all purchasers and others dealing in any natural products severed from the soil or water in Louisiana to file quarterly with the said Supervisor of Public Accounts a statement, under oath, showing the names and addresses of all persons, firms, corporations, or associations of persons from whom each said purchaser or dealer has purchased any natural product severed from the soil or water in Louisiana during said quarter; together with the total quantity of, and gross price paid for, each such natural product. Said reports shall be filed within thirty (30) days after the expiration of each quarter, and shall be made on such forms as may be prescribed by said Supervisor of Public Accounts. The

failure of any person, firm, corporation or association of persons to make reports as herein provided shall be punished by fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each such offense.

SECTION 21. Nothing contained in this Act shall be construed as in any wise impairing or depriving the State of Louisiana of any rights and claims whatsoever it may have for the license tax due or to become due under Act 31 of 1920 and other laws, and as herein provided; said rights and claims being hereby specially reserved, whether they be in litigation or not, and all proceedings pending or which may be brought shall be prosecuted as though this Act had not been enacted; provided that said license tax is hereby imposed and shall be collectible in accordance with the provisions of said Act 31 of 1920 up to and until the time herein prescribed for the reports and payments of the severance tax levied and as levied by this Act; it being the true intent and purpose of this Act that said license tax shall be imposed and collected until the time aforesaid; and provided further that all funds thus collected shall be paid into the Severance License Tax Fund as heretofore.

SECTION 22. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or any part thereof, directly involved in the controversy in which such judgment has been rendered.

SECTION 23. This Act shall become effective in accordance with all its terms and conditions from and after the 31st day of December, 1922.

Approved by the Governor:

July 14, 1922, 8:40 A. M.

A true copy:

JAMES J. BAILEY,

Secretary of State.

COPY COPY

ACT NO. 5.

House Bill No. 89, By Mr. McClanahan.

AN ACT

To amend and re-enact Sections 2 and 5 of Act 140 of 1922, and entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite, and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural re-

sources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided," and to amend and re-enact section 3 thereof, as amended and re-enacted by Act No. 301 of 1926.

SECTION 1. Be it enacted by the Legislature of Louisiana, That Section 2 of Act 140 of 1922, entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided." be amended and re-enacted so as to read as follows:

SECTION 2. Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed, and shall be paid at the following rates:

(1) On cypress timber, twenty-six (26) cents per thousand feet, log scale.

(2) On second growth or old field pine timber, seven (7) cents per thousand feet, and on virgin pine timber seventeen (17) cents per thousand feet, log scale.

(3) On ash and hickory timber, twenty-four (24) cents per thousand feet, log scale.

(4) On cottonwood, red gum, magnolia, oak, poplar and sycamore timber, twelve (12) cents per thousand feet, log scale.

(5) On tupelo gum, black gum and sap gum timber, seven (7) cents per thousand feet, log scale, and on all other hardwoods ten (10) cents per thousand feet, log scale.

(6) On turpentine, (crude gum), ten (10) cents per barrel of 400 pounds.

(7) a. On oil of 28° gravity and below, four (4) cents per barrel of 42 gallons.

b. (1) On oil above 28° gravity and not above 31° gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

b. (2) On oil above 31° gravity and not above 32° gravity, five (5) cents per barrel of 42 gallons.

(c.) On oil above 32° gravity and not above 36° gravity, eight (8) cents per barrel of 42 gallons.

(d.) On oil above 36° gravity and not above 43° gravity, ten (10) cents per barrel of 42 gallons.

(e.) On oil above 43° gravity, eleven (11) cents per barrel of 42 gallons.

(8) On gas, one-fifth (1/5th.) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure.

(9) On sulphur, fifteen (15) cents per ton of two thousand pounds.

(10) On salt, four (4) cents per ton of two thousand pounds.

(11) On coal, five (5) cents per ton of two thousand pounds.

(12) On lignite, five (5) cents per ton of two thousand pounds.

(13) On ores, five (5) cents per ton of two thousand pounds.

(14) On marble, ten (10) cents per ton of two thousand pounds.

(15) On stone, one and one-half (1½) cents per ton of two thousand pounds.

(16) On gravel, one and one-half (1½) cents per ton of two thousand pounds.

(17) On sand, one (1) cent per ton of two thousand pounds.

(18) On shells, one and one-half (1½) cents per ton of two thousand pounds.

SECTION 2. That section 3 of Act 140 of 1922, as amended and re-enacted by Act 301 of 1926, be amended and re-enacted so as to read as follows:

"SECTION 3. All such taxes shall be collected quarterly by the respective Sheriffs and Ex-Officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and, unless otherwise herein provided, in the same manner and at the same time as required by law for other state collections.

When so paid into the State treasury, all of the severances taxes collected on oil, gas, salt and shells, not otherwise allocated herein, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the auditor and treasurer to a special fund, which is hereby created to be known as the Severance Tax Fund of the State of Louisiana.

One-fifth (1/5th) of the severance taxes collected on oil, gas, shells, timber, sand, and gravel, is hereby allocated to the parish from which such taxes are collected, and shall be credited to such parish by the auditor and treasurer, provided such allocation and credit shall not exceed Two Hundred Thousand ($200,000.00) Dollars in any parish in any one year. When this limit of Two Hundred Thousand ($200,000) Dollars shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created."

That Section 5 of Act 140 of 1922 be amended and re-enacted so as to read as follows:

"SECTION 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons, during the last preceding quarter-annual period, showing the kind of natural resources and the gross quantity of each so severed or produced, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each

natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report to the Supervisor of Public Accounts, each person, firm, corporation, or association of persons, shall concurrently file a duplicate thereof with the Tax Collector of the Parish where said natural resources were taken or severed from the soil or water; and shall pay to said Tax Collector a tax on the gross quantity of each natural resource severed, computed at the rate applying thereto as named in Section two (2) of this Act."

APPROVED BY THE GOVERNOR: July 7, 1928.

A true copy:

JAMES J. BAILEY,
Secretary of State.